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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

D. SIDNEY POTTER, an individual; Plaintiff, v. H&R BLOCK, INC., Defendant.	CASE NO. 2:16-cv-00470 **NOTICE OF REMOVAL**

PLEASE TAKE NOTICE THAT Defendant H&R Block, Inc.[1], by and through its undersigned counsel, hereby removes the above-captioned action from the Superior Court of the State of California for the County of Los Angeles, pursuant to 28 U.S.C. §§ 1332, 1441, and 1446, based upon the following:

I. BACKGROUND FACTS

1. On or about November 28, 2015, Plaintiff filed a Complaint in the Superior Court of the State of California for the County of Los Angeles, captioned *D. Sidney Potter v. H&R Block, Inc.*, case No. BC603305 ("the State Court Action").

2. On December 22, 2015, H&R Block, Inc. received a copy of the Complaint, without a summons, via U.S. certified mail. Pursuant to 28 U.S.C. § 1446(a), a copy of the Complaint filed in the State Court Action is attached hereto as Exhibit A. The Complaint in the State Court Action constitutes the only process, pleadings, or papers served upon H&R Block, Inc.

3. This Notice of Removal is filed within 30 days of H&R Block, Inc.'s receipt of the Complaint, and is therefore timely under 28 U.S.C. § 1446(b).[2]

4. H&R Block, Inc.'s time to respond to the Summons and Complaint by answer or motion to dismiss has not expired, and H&R Block, Inc. has not filed an answer or motion to dismiss in response to the Complaint.

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[1] By filing this Notice of Removal, H&R Block, Inc. does not consent to jurisdiction of the Court and does not waive or intend to waive any arguments or defenses it may have to jurisdiction or otherwise. *See, e.g.*, *Freeney v. Bank of Amer. Corp.*, 2015 WL 4366439, at *20 (C.D. Cal., July 16, 2015) ("A defendant's election to remove a case to federal court does not waive a personal jurisdiction defense.") (collecting cases).

[2] Despite the failure to include a summons with the Complaint and other service defects/issues, H&R Block, Inc. files this notice of removal within 30 days of the date it received the Complaint in an abundance of caution.

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5. No motions or other proceedings are pending in the State Court Action. A copy of the State Court Action case summary is attached hereto as **Ex. B**.

6. Written notice of the filing of this Notice of Removal will be served on Plaintiff, pro se, and a copy of this Notice will be filed with the Clerk of the Superior Court of the State of California for the County of Los Angeles, as required by 28 U.S.C. § 1446(d).

7. The United States District Court for the Central District of California is the federal judicial district embracing the Superior Court of the State of California for the County of Los Angeles, where the State Court Action is pending. *See* 28 U.S.C. § 1441(a).

8. This action is removable to the instant Court because it originally could have been filed in this Court pursuant to 28 U.S.C. § 1441(a)–(b). The parties meet the requirements for complete diversity as set forth below.

II. DIVERSITY JURISDICTION

1. Subject matter jurisdiction under 28 U.S.C. § 1332(a) requires a diversity of citizenship between the parties and an amount “in controversy that exceeds the sum or value of $75,000, exclusive of interest and costs.” 28 U.S.C. § 1332(a).

2. This Court has original jurisdiction pursuant to 28 U.S.C. § 1332(a) because there is complete diversity among the parties and the amount in controversy exceeds $75,000, exclusive of interest and costs. 28 U.S.C. § 1332(a).

A. Complete Diversity Exists.

i) Plaintiff alleges in the section of the Complaint entitled “Parties” that he is a resident of the State of California. Defendant H&R Block, Inc. is informed and believes that Plaintiff was, and still is, a citizen of the State of California. *See* **Ex. A** at p. 3.

ii) Defendant H&R Block, Inc. is a corporation with its principal place of business in the state of Missouri. H&R Block, Inc. is incorporated in the state of Missouri. Therefore, H&R Block, Inc. is a citizen of the state of Missouri, but not California. *See* 28 U.S.C. § 1332(c).

iii) As such, complete diversity exists between Plaintiff and Defendant H&R Block, Inc.

B. The Amount in Controversy Exceeds $75,000.

i) In cases where the Complaint does not request a specific amount of damages, a removing defendant may allege in the Notice of Removal and prove by a preponderance of the evidence that the amount in controversy exceeds the jurisdictional minimum. *See* 28 U.S.C. § 1446(c)(2)(A). This is also permitted when the Complaint seeks nonmonetary relief. *See* 28 U.S.C. § 1446(c)(2)(A)(i).

ii) To satisfy the preponderance of the evidence test, a defendant must provide evidence that "it is more likely than not" that the amount in controversy is satisfied. *Guglielmino v. McKee Foods Corp.*, 506 F.3d 696, 699 (9th Cir. 2007).

iii) In the Complaint, Plaintiff prays for relief in the form of: 1) general damages; 2) special damages; 3) compensatory damages; 4) punitive and exemplary damages; 5) declaratory and injunctive relief; and 6) attorney's fees should he retain counsel. *See* **Ex. A** at p. 12-13.

iv) Plaintiff claims damages in an amount no less than $469,191. Specifically, the Complaint alleges that he has "suffered general and special damages for, inter alia, the future loss of his NOL [net operating loss], as provided by the Internal Revenue Code, to shield taxable gains, in an amount no less in excess of Four Hundred and Sixty Nine Thousand, One Hundred and Ninety Dollars ($469,191) according to proof at the time of trail [sic]." *See* **Ex. A,** at p. 12, ln. 10-15.

v) In addition, Plaintiff seeks punitive damages and attorney's fees, "should the Plaintiff hire a lawyer to handle this litigation," which may be considered as part of the amount in controversy. *Gibson v. Chrysler Corp.*, 261 F. 927, 945 (9th Cir. 2001); *see also, e.g., Erazo v. Millard Mall Servs., Inc.*, 2:14-CV-02612-ODW, 2014 WL 2547609, at *2 (C.D. Cal. June 5, 2014). *See* **Ex. A** at p. 12-13.

vi) As such, the amount in controversy is more likely than not greater than $75,000.

III. CONCLUSION

Accordingly, this action is properly removed to this Court pursuant to 28 U.S.C. §§ 1332 and 1441.

Dated: January 21, 2016

Respectfully Submitted,
ABELSON HERRON HALPERN LLP
Michael Bruce Abelson
Heather L. Mayer

By /s/ Heather L. Mayer
Heather L. Mayer
Attorney for Defendant H&R Block, Inc.